

By: Ellis

S.B. No. 1011

A BILL TO BE ENTITLED

AN ACT

relating to the Texas Department of Housing and Community Affairs.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 2306.6702(10), Government Code, is amended to read as follows:

(10) "Qualified allocation plan" means a plan adopted by the board under this subchapter that:

(A) provides the threshold, ~~scoring,~~ and underwriting criteria based on and consistent with this Chapter ~~housing priorities of the department that are appropriate to local conditions,~~

~~[(B)] consistent with Section 2306.6710(e), gives preference in housing tax credit allocations to developments that, as compared to the other developments,~~

~~[(i) when practicable and feasible based on documented, committed, and available third-party funding sources, serve the lowest income tenants per housing tax credit, and~~

~~[(ii) produce for the longest economically feasible period the greatest number of high quality units committed to remaining affordable to any tenants who are income-eligible under the low income housing tax credit program]; and~~

(B) ~~[(C)]~~ provides a procedure for the department, the department's agent, or another private contractor of the department to use in monitoring compliance with the

1 qualified allocation plan and this subchapter.

2 SECTION 2. Section 2306.6704, Government Code, is amended
3 by amending Subsections (b-1) and (d) and adding Subsection (e) to
4 read as follows:

5 (b-1) The ~~pre~~application process must require the applicant
6 to provide, not earlier than the deadline for submitting an
7 application, the department with evidence that the applicant has
8 notified the following entities with respect to the filing of the
9 application:

10 ~~(1) any neighborhood organizations on record with the~~
11 ~~state or county in which the development is to be located and whose~~
12 ~~boundaries contain the proposed development site;~~

13 ~~(2) the superintendent and the presiding officer of~~
14 ~~the board of trustees of the school district containing the~~
15 ~~development;~~

16 (1) ~~(3)~~ the presiding officer of the governing body of
17 any municipality containing the development ~~and all elected members~~
18 ~~of that body;~~

19 (2) ~~(4)~~ the presiding officer of the governing body of
20 the county containing the development ~~and all elected members of~~
21 ~~that body;~~ and

22 (3) ~~(5)~~ the state senator and state representative of
23 the district containing the development.

24 (d) If feasible under Section 2306.67041, an application
25 under this section may ~~must~~ be submitted electronically.

26 (e) The department shall specify the date for filing a
27 pre-application under this section. The last date for submitting a

1 pre-application under this section may not be earlier than
2 February 1.

3 SECTION 3. Section 2306.6710, Government Code, is amended
4 to read as follows:

5 Sec. 2306.6710. EVALUATION AND UNDERWRITING OF
6 APPLICATIONS.

7 (a) By rule, the department shall develop distinct
8 threshold criteria applicable to the following categories of low
9 income housing tax credit applicants: (1) At-Risk development, (2)
10 Non-Profit developments, (3) developments receiving federal
11 financial assistance from the Rural Housing Service of the United
12 States Department of Agriculture under section 514 or 515 of the
13 Housing Act of 1949, and (4) general developments. As a threshold
14 criteria, for a development located in a county with a median income
15 higher than the statewide median income, the development must
16 commits to serve either 80% of the units for households with income
17 equal to or below 50% of the area median gross household income or
18 10% of the units for households with income equal to or below 30% of
19 the area median gross household income. For developments located
20 in a county with a median income equal to or less than the statewide
21 median income, the department shall not impose any threshold
22 criteria for income level of tenants other than those required by
23 Section 42 of the Internal Revenue Code. ~~In evaluating an~~
24 ~~application, the department shall determine whether the~~
25 ~~application satisfies the threshold criteria required by the board~~
26 ~~in the qualified allocation plan.~~ The department shall reject and
27 return to the applicant any application that fails to satisfy the

1 threshold criteria. At the time of application submittal, each
2 application shall specify one of the four categories for which it
3 qualifies.

4 (b) The Board shall utilize the follow threshold criteria;

5 (1) Submission of an application that contains the
6 information required by Section 2306.6705, and;

7 (2) provides information regarding the location of the
8 development;

9 (3) Confirmation of the eligibility for the Set Asides udner
10 which the development is seeking funding;

11 (4) Certification of the basic amenities selected for the
12 development;

13 (5) a preliminary site plan and elevation renderings;

14 (6) evidence of site control;

15 (7) Evidence of public notifiocations as required by this
16 Chapter;

17 (8) a description of the development's proposed ownership
18 structure and the applicant's previous experience in affordable
19 housing;

20 (9) Financial sttements of the applicant and all
21 controlling persons;

22 (10) a description of any supportive servcies planned for
23 the development;

24 (11) Information to establish the financial feasibility of
25 the development.

26 (c) ~~(b)~~ If an application satisfies the threshold criteria,
27 the application shall be eligible for the lottery selection

1 procedure detailed in Section 2306.6711 of this Chapter.
2 ~~department shall score and rank the application using a point~~
3 ~~system that:~~

4 ~~(1) priorities in descending order criteria regarding:~~

5 ~~(A) financial feasibility of the development based on~~
6 ~~supporting financial data required in the application that~~
7 ~~will include a project underwriting pro forma from the~~
8 ~~permanent or construction lender;~~

9 ~~(B) quantifiable community participation with respect to~~
10 ~~the development, evaluated on the basis of written~~
11 ~~comments from any neighborhood organizations on record~~
12 ~~with the state or county in which the development is to be~~
13 ~~located and whose boundaries contain the proposed~~
14 ~~development site;~~

15 ~~(C) the income levels of tenants of the development;~~

16 ~~(D) the size and quality of the unit;~~

17 ~~(E) the commitment of development funding by local~~
18 ~~political subdivisions;~~

19 ~~(F) the level of community support for the application,~~
20 ~~evaluated on the basis of written statements from state~~
21 ~~elected officials;~~

22 ~~(G) the rent levels of the units;~~

23 ~~(H) the cost of the development by square foot; and~~

24 ~~(I) the services to be provided to tenants of the~~
25 ~~development; and~~

26 (c) No applications shall be accepted from a (2) uses criteria
27 ~~imposing penalties on applicants or affiliates who have requested~~

1 ~~extensions of department deadlines relating to developments~~
2 ~~supported by housing tax credit allocations made in the application~~
3 ~~round preceding the current round or a developer or principal of the~~
4 ~~applicant that has been removed by the lender, equity provider, or~~
5 ~~limited partners for its failure to perform its obligations under~~
6 ~~the loan documents or limited partnership agreement in the past~~
7 ~~five calendar years. No developer or principal, whether acting~~
8 ~~individuals or in concert with others, shall directly or~~
9 ~~indirectly, submit applications which applications in the combined~~
10 ~~amount exceed twice the maximum allowable credits specified in~~
11 ~~Section 2306.6711 of this Chapter.~~

12 ~~(c) The department shall publish in the qualified allocation plan~~
13 ~~details of the scoring system used by the department to score~~
14 ~~applications.~~

15 ~~(d) The department shall underwrite the applications ranked under~~
16 ~~Subsection (b) beginning with the applications with the highest~~
17 ~~scores in each region described by Section 2306.111(d) and in each~~
18 ~~set-aside category described in the qualified allocation plan.~~
19 ~~Based on application rankings, the department shall continue to~~
20 ~~underwrite applications until the department has processed enough~~
21 ~~applications satisfying the department's underwriting criteria to~~
22 ~~enable the allocation of all available housing tax credits~~
23 ~~according to regional allocation goals and set-aside categories.~~
24 ~~To enable the board to establish an applications waiting list under~~
25 ~~Section 2306.6711, the department shall underwrite as many~~
26 ~~additional applications as the board considers necessary to ensure~~
27 ~~that all available housing tax credits are allocated within the~~

1 ~~period required by law. The department shall underwrite an~~
2 ~~application to determine the financial feasibility of the~~
3 ~~development and an appropriate level of housing tax credits. In~~
4 ~~determining an appropriate level of housing tax credits, the~~
5 ~~department shall evaluate the cost of the development based on~~
6 ~~acceptable cost parameters as adjusted for inflation and as~~
7 ~~established by historic final cost certifications of all previous~~
8 ~~housing tax credit allocations for:~~

9 ~~(1) the county for which the development is to be located;~~

10 ~~(2) if certifications are unavailable under Subdivision~~

11 ~~(1), the metropolitan statistical area in which the~~
12 ~~development is to be located; or~~

13 ~~(3) if certifications are unavailable under Subdivision (1)~~

14 ~~and (2), the uniform state service region in which the~~
15 ~~development is to be located.~~

16 ~~(c) In scoring applications for purposes of housing tax credit~~
17 ~~allocations, the department shall award, consistent with Section~~
18 ~~42, Internal Revenue Code of 1986 (26 U.S.C. Section 42),~~
19 ~~preference points to a development that:~~

20 ~~(1) when practicable and feasible based on documented, committed,~~
21 ~~and available third-party funding sources, serve the lowest income~~
22 ~~tenants per housing tax credit, if the development is to be located~~
23 ~~outside a qualified census tract; and~~

24 ~~(2) produce for the longest economically feasible period the~~
25 ~~greatest number of high quality units committed to remaining~~
26 ~~affordable to any tenants who are income-eligible under the low~~
27 ~~income housing tax credit program.~~

1 ~~(f) In evaluating the level of community support for an~~
2 ~~application under Subsection (b)(1)(F), the department shall~~
3 ~~award:~~

4 ~~(1) positive points for positive written statements~~
5 ~~received;~~

6 ~~(2) negative points for negative written statements~~
7 ~~received; and~~

8 ~~(3) zero points for neutral statements received.~~

9 ~~(g) In awarding points under Subsection (f), the department~~
10 ~~shall give equal weight to each written statement received.~~

11 SECTION 4. Section 2306.6711(a)-(c), Government Code, is
12 amended to read as follows:

13 (a) The selection of applications for an allocation of housing tax
14 credits shall be by means of a lottery conducted in public at a
15 Department board meeting. The selection lottery for each category
16 and for each region or state-wide as appropriate shall be conducted
17 in the following order:

18 (1) The developments that satisfy the department's
19 threshold criteria plus achieving at least one of the preferences
20 detailed in Section 42 of the Internal Revenue Code; and

21 (2) If there remains any credits available after the
22 conclusion of the lottery for developments in section
23 2306.6711(a)(1), then a lottery shall be conducted for developments
24 that satisfy the department's threshold criteria.

25 (3) After selection of developments for funding by means of
26 the lottery, the department shall continue the lottery to develop
27 the order of a waiting list in the event selected applications are

1 otherwise ineligible or fail to qualify for an allocation. ~~The~~
2 ~~director shall provide the application scores to the board before~~
3 ~~the 30th day preceding the date the board begins to issue~~
4 ~~commitments for housing tax credits in the allocation round.~~

5 (b) Not later than the deadline specified in the qualified
6 allocation plan, the board shall issue commitments for available
7 housing tax credits based on the application selection ~~evaluation~~
8 process ~~provided by Section 2306.6710~~. The board may not allocate
9 to an applicant housing tax credits in any unnecessary amount, as
10 determined by the department [~~department's underwriting policy~~]
11 and by federal law, and in any event may not allocate to any one
12 person [~~the applicant~~] housing tax credits in an amount greater
13 than \$2.4 million in a single application round, adjusted annually,
14 by an amount equal to the annual change, if any, in the consumer
15 price index, except as provided by this subsection. The limitation
16 applies to a person regardless of whether the person is involved in
17 the development in the capacity of the applicant or in the capacity
18 of a related party. A development financed with tax-exempt bonds is
19 not subject to the limitation, and the development does not count
20 towards the total limit on housing tax credits per person. The
21 limitation does not apply to:

22 (1) an entity that raises or provides equity for one or
23 more developments, solely with respect to its actions in raising or
24 providing equity for those developments;

25 (2) the provision by an entity of qualified commercial
26 financing as that term is defined under Section 49(a)(1)(D)(ii),
27 Internal Revenue Code of 1986; or

1 (3) a development consultant with respect to the
2 provision of consulting services, provided the development
3 consultant is not a related party to the applicant and otherwise
4 does not own an interest in the development and the consultant fee
5 received for those services does not exceed \$150,000 or ten percent
6 of the developer fee, whichever is greater.

7 (c) Concurrently with the initial issuance of commitments
8 for housing tax credits under Subsection (b), the board shall
9 establish a waiting list of additional applications ranked by the
10 results of the lottery ~~score in descending order of priority~~ based
11 on set-aside categories and regional allocation goals.

12 SECTION 5. Sections 2306.6701, 2306(8) and (9),
13 2306.6712(e), 2306.6725(b) and (d), and 2306.6726 of the Government
14 Code are repealed.

15 SECTION 6. It is the intent of the legislature that the
16 passage by the 80th Legislature, Regular Session, 2007, of another
17 bill that amends Chapter 2306, Government Code, and the amendments
18 made by this Act shall be harmonized, if possible, as provided by
19 Section 311.025(b), Government Code, so that effect may be given to
20 each. If the amendments made by this Act to Chapter 2306,
21 Government Code, and the amendments made to Chapter 2306,
22 Government Code, by any other bill are irreconcilable, it is the
23 intent of the legislature that this Act prevail, regardless of the
24 relative dates of enactment of this Act and the other bill or bills,
25 but only to the extent that any differences are irreconcilable.

26 SECTION 7. This Act takes effect September 1, 2007